

BOARD OF APPEALS CASE NO. 075

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BEFORE THE

APPLICANT: HIDDEN STREAM
DEVELOPMENT LLC

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ZONING HEARING EXAMINER

REQUEST: Rezone .9146 acres from R1
to R3; Harford Town Drive, Abingdon

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 1/14/98 & 1/21/98

HEARING DATE: March 18, 1998

Record: 1/16/98 & 1/23/98

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Hidden Stream Development, LLC, a Maryland limited liability company, appeared before the Hearing Examiner requesting reclassification of 0.912 acres, more or less, from its current R1, Urban Residential, zoning classification, to the R3, Urban Residential, zoning classification. The subject parcels are identified as Parcel 678, Lot 372, containing 0.923 acres, more or less, of which 0.014 acres, more or less, is to be rezoned; Lot 373, containing 0.623 acres, more or less of which 0.401 acres, more or less, is to be rezoned and Lot 374, containing 0.477 acres, more or less, of which 0.376 acres, more or less, is to be rezoned and open space containing 0.218 acres, more or less, of which 0.121 acres, more or less, is to be rezoned on Tax Map 62.

The first witness to testify on behalf of the Applicant was Morris H. Wolf. Mr. Wolf described the residential subdivision he is developing known as "Harford Town" located on the adjacent property. He testified that the subject property, if rezoned, would be combined with the existing Harford Town subdivision.

Mr. Wolf pointed out that the development originally consisted of nine separate parcels. Since the last comprehensive rezoning, these parcels have been combined into one large parcel for development. Unless the subject property is rezoned, split zoned parcels of R1 and R3 zoning will be created. These parcels would be difficult to market as they would be substantially larger than adjoining properties contained in Harford Town.

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He also said that houses built on the existing parcels would be incompatible with surrounding homes. Rezoning the subject property will enable it to be integrated into the Harford Town development with a unified R3 zoning classification. Mr. Wolf stated that rezoning such a small area R3 will not cause any harm of any kind to anyone.

Mr. Wolf noted that in 1996, he requested that adjoining property also be rezoned from R1 to R3 classification in Case Nos. 68 and 69 for the same reason, i.e., that split zoned parcels would result unless the rezoning was granted. His request was granted by the Board of Appeals. However, through inadvertence, the subject property was not included in Case Nos. 68 and 69.

Next, Paul Muddiman, an expert in site plan design testified. Mr. Muddiman stated that virtually all of the land shown on the preliminary plan of the subdivision had been recorded on subdivision plats. The subject property is the last portion of Harford Town to be built. He indicated that rezoning the subject property R3 would eliminate the split zoned parcels which would be created as a result of the approved development. Mr. Muddiman explained that wetlands located on the site and the requirement of Harford County that Bush Road be relocated were the two main factors that controlled the design of Harford Town. He testified that the wetlands on the site were not delineated and the location of relocated Bush Road was not determined until after the last comprehensive rezoning was completed. He noted that because Bush Road was already constructed, the lot layout of the subdivision could not be redesigned so that split zoned parcels could be eliminated.

The next witness to testify was Denis Canavan, an expert land planner. He testified that he had been retained by the Applicants to analyze its rezoning request. In connection with his analysis, he reviewed the zoning application, the staff report, tax maps, the Harford County Zoning Code, the 1988 Land Use Plan, the 1996 Land Use Plan, the zoning maps, as well as all of Applicant's exhibits.

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Mr. Canavan confirmed that the development of Harford Town would create split zoned parcels comprised of both R1 and R3 zoning. He also testified that rezoning the subject property R3 is appropriate because it will cure this problem, is consistent with the 1996 Land Use Plan and it represents a logical extension of Harford Town which is virtually complete.

Mr. Canavan went on to say that the Harford County Council ("Council") had a policy during the last comprehensive rezoning that properties not be split zoned. He explained that the R1 zoning of the subject property was inconsistent with that policy.

Mr. Canavan also testified that it was his opinion that a mistake was made in the last comprehensive rezoning by retaining the R1 zoning for the subject property and that rezoning the subject property R3 would be a correction of that mistake. He stated that based on the testimony of Mr. Wolf and Mr. Muddiman, it was clear that the Council could not have known during the last comprehensive rezoning in 1989 that Harford Town would be developed as shown on the preliminary plan, that wetlands and the location of Bush Road would impact the site plan and that split zoned parcels would result. Mr. Canavan testified that, in his opinion, had these facts been known by the Council, the Council would not have zoned the subject property R1 in the last comprehensive rezoning. He pointed out that only a small area of land is to be rezoned and doing so would cause no adverse impact. Mr. Canavan testified that zoning the subject property R3 would avoid the creation of split zoned parcels, and therefore would be appropriate and bear substantial relationship to the health, safety and general welfare.

Next testified, Anthony S. McClune, Chief of Current Planning of the Department of Planning and Zoning. Mr. McClune summarized the Staff Report, indicating that the Department supported the requested rezoning on the basis of a mistake. He noted that the Staff determined that a mistake has occurred in the legal sense and the R3 zoning should be granted as shown the Applicant's site plan (Attachment 3).

No protestants testified in opposition to the Applicant's request.

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CONCLUSION:

In order to justify a reclassification, the burden is on the applicant to overcome the presumption of correctness in the classification of the property during the last comprehensive rezoning by proving that a mistake in the legal sense was made in the last comprehensive rezoning or that a substantial change in the neighborhood of the property has taken place since the comprehensive rezoning was completed. The mistake can be the result of subsequently occurring events which the Council could not have taken into account. The Applicant, through the testimony of its expert witness, has alleged a mistake.

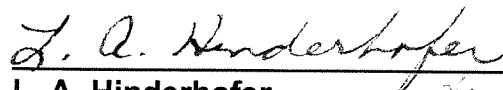
The evidence presented showed that unless the subject property is rezoned, several split zoned parcels will result. The Council was not and could not have been aware that the nine separate parcels which originally comprised the subject property would be combined into Harford Town as it exists today. The relocation of Bush Road and the extent and location of wetlands located on the site were likewise unknown at the last comprehensive rezoning. Mr. Canavan stated that had these facts been known by the Council at that time, it would not have zoned the property R1. These were subsequently occurring events which the Council could not have taken into account during the last comprehensive rezoning. As pointed out by Mr. Canavan, zoning the subject property R1 violated an important policy of the Council, i.e., zoning properties so that no split zoned parcels would be created. The Staff Report also indicated that a mistake in the legal sense had been made which should be corrected by rezoning the subject property R3. Because the instant request involves a change from R1 to R3, i.e., one residential subcategory to another, the standard of proving a mistake is more liberal than if the Applicant was requesting rezoning to a commercial or industrial classification. Tennison v. Shomette 38 Md. App 1, 379, A.2d 187 (1977) (cert denied 1978) ("Tennison"). Assuming *arguendo*, that the Applicant failed to meet the normal burden of proof to justify a rezoning, it clearly met the more liberal standard of Tennison to justify the rezoning to R3. For all these reasons, it is the finding of the Hearing Examiner that a mistake in the legal sense occurred when the subject property was zoned R1 in the 1989 Comprehensive Rezoning.

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The evidence presented shows that the public health, safety and welfare would be preserved and promoted by rezoning the subject property R3. Adjoining property was rezoned from R1 to R3 in Case Nos. 68 and 69. Zoning the subject property R3 would be a logical extension of and consistent with the R3 zoning in Harford Town and would avoid the creation of split zoned parcels.

Therefore, it is the recommendation of the Hearing Examiner that the Applicant's request to rezone the subject property from R1 to R3 be approved.

Date MARCH 31, 1998



L. A. Hinderhofer
Zoning Hearing Examiner